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In re:  
Application for Certification for the:  
Alamitos Energy Center

Docket No. 13-AFC-01

**INTERVENOR LOS CERRITOS WETLANDS LAND  
TRUST  
Part 2 Reply Brief**

Submitted by:

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January 17, 2016

## TRUST'S PART 2 REPLY BRIEF

Consistent with the Committee's *Notice of Second Evidentiary Hearing, Scheduling Order, and Further Orders*, the Los Cerritos Wetlands Land Trust (Trust) submits this Part 2 Reply Brief in response to the Part 2 Opening Briefs of the Commission Staff and Applicant.

### I. SUMMARY

The proposed AEC project violates LORS and will create unmitigated and cumulatively significant impacts on the adjacent Los Cerritos Wetlands, while an adequate substitute that would meet all project objectives, eliminate LORS violations, and minimize air quality and greenhouse gas (GHG) impacts is readily available. The Commission's narrow treatment of applicable GHG LORS in its Part 2 Opening Brief ignores critical GHG reduction LORS considered by the CPUC to limit gas-fired generation at the Alamitos site to 640 MW. The Applicant's claim in its Part 2 Opening Brief that the combined cycle power block meets CAISO LORS is contradicted by the FSA and the Applicant's own witness. In conclusion:

1. The proposed AEC is inconsistent with CAISO LORS, specifically CAISO Tariff Section 40.3.1.1.
2. The proposed AEC at 1,040 MW is inconsistent with GHG reduction LORS, including Public Utilities Code Section §454.5(b)(9)(C), §399.11(a), §2836(a)(2), 2827(c)(4)(B)(ii), AB 32 (2006), and SB 32 (2016) to reduce GHG emissions, as incorporated in the CPUC planning process that resulted in a contract for 640 MW of gas-fired generation at the Alamitos site.
3. The proposed AEC would create unmitigated cumulatively considerable and significant impacts to nearby wetlands Biological Resources and Soil & Water Resources;
4. The applicant, in addition to the 640 MW combined cycle power block, is actively pursuing other supply resources at the Alamitos site, including 400 MW of simple-cycle gas turbines and 200 MW of (additional) battery storage,

that would meet all project objectives and reduce air quality and GHG impacts by approximately 90 percent.

The PMPD must therefore deny the SAFC for 1,040 MW of gas-fired generation.

Several procedural complaints stated by the Applicant in its Part 2 Opening Brief should be disregarded by the Committee:

- Arguments by the Applicant that the Trust has raised “issues for the first time” in several of the writings are irrelevant. The process is open for new evidence and arguments until the conclusion.
- Arguments by the Applicant that the Trust has not met procedural rules for filings (eg, motions, signatures, etc) was resolved by the Hearing Officer.
- Arguments by the Applicant that the Trust has made “collateral attacks” on the Committee’s decision on Staff’s Motion are misplaced, as the Trust has repeatedly stated in responses. In its Part 2 Opening Brief it is the Applicant that has made a last minute “collateral attack” on the Committee’s decision.

The CPUC must rely on this Commission to thoroughly review a 640 MW facility for conformance with CEQA standards.<sup>1</sup> The CPUC found that, should this Committee find that CEQA review mandates denial of the project as proposed, the contract approved by the CPUC can expire without moving forward.<sup>2</sup> The Applicant took a risk applying for a 1040 MW gas-fired project that is inconsistent with LORS, as was apparent in the CPUC decision. Now it is clear the project, beyond just being inconsistent with LORS, creates significant adverse impacts to the environment that are not adequately mitigated in the conditions of approval. And it is now clear there are available alternatives that would be consistent with LORS, minimize environmental harm, and meet the basic objectives of the project.

Finally, denying approval of the SAFC will not cause grid reliability issues. As the Commission is aware, the CAISO can request a reasonable extension of the once-

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<sup>1</sup> Exh 3044, TN 212764-2, CPUC Decision, at p. 29, Section 10

<sup>2</sup> Ibid

through cooling compliance deadline for AES Units 1-6. The Applicant can submit a new SAFC to this Commission that meets the objectives of grid reliability while simultaneously minimizing adverse impacts to the environment and ensuring consistency with all state LORS.

## **II. SLOW RESPONSE TIME OF THE COMBINED CYCLE POWER BLOCK IS A CAISO TARIFF LORS VIOLATION**

California Independent System Operator (CAISO) tariff standards are part of the universe of “Laws, Ordinances, Regulations, and Standards” (LORS) listed by the Commission.<sup>3</sup> CAISO Tariff Section 40.3.1.1 requires a response time of 20 minutes from dispatch order to full output to qualify as a grid reliability resource, as explained in the Trust’s Part 2 Opening Brief. Despite applicant misrepresentations in its Part 2 Opening Brief, there is no startup scenario, cold, warm, or hot, where the combined cycle power block can meet the CAISO Tariff Section 40.3.1.1 response time requirement.

### **A. AES Misstatement Cannot Alter the Start Time Performance Limitations of the Combined Cycle Power Block**

AES incorrectly asserts that: “*The Trust has confused start time defined for the air quality analysis with the start time for purposes of electrical generation.*”<sup>4</sup> AES repeats a misstatement from its FSA Part 2 rebuttal testimony that was thoroughly

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<sup>3</sup> See Commission’s “Laws, Ordinances, Regulations and Standards in Siting Cases” webpage: [http://www.energy.ca.gov/public\\_adviser/lors\\_faq.html](http://www.energy.ca.gov/public_adviser/lors_faq.html). “The Cal-ISO Reliability Criteria incorporate the WSCC Criteria and NERC Planning Standards. However, the Cal-ISO Reliability Criteria also provide some additional requirements that are not found in the WSCC Criteria or the NERC Planning Standards. The Cal-ISO Reliability Criteria apply to all existing and proposed facilities interconnecting to the Cal-ISO controlled grid.”

<sup>4</sup> TN 215203, Applicant Part 2 Opening Brief, p. 18.

addressed in the Part 2 hearing. The Trust spent considerable time at the December 20, 2016 hearing confirming that the start time(s) for the proposed combined cycle power block could not achieve the CAISO Tariff Section 40.3.1.1 response time requirement of 20 minutes from dispatch order to full output:<sup>5</sup>

*MR. POWERS: Very good. Thank you. I think the first question would be for Staff, and that is just to get a clarification, and it's a combination of Staff and AES. In AES rebuttal to my opening, they indicate that I'm confused on the amount of time for the emission control systems to warm up, 30 percent (minutes) for warm-hot start, 60 minutes for cold start, and not the electrical output, meaning how much time it takes to get to full output. Yet, in your FSA Part 2, page 4.7-28, when you describe the start-up events for the combined-cycle turbines, at the bottom of that page you have bulleted the cold-start event, warm-start event, hot-start event. You state, "It can take up to 60 minutes from fuel initiation for the equipment to reach a baseload operating rate." Now did you mean to meet the electrical baseload operating rate, it could take up to 60 minutes from ignition to reach that baseload operating rate?*

FSA Part 2, page 4.7-28 is unambiguous. It states that the time from fuel initiation to baseload operating rate is up to 30 minutes for warm and hot starts and up to 60 minutes for cold starts. AES did not contest this description of the duration of cold, warm, and hot starts at the December 20, 2016 hearing. Yet this statement in its opening brief "*The Trust has confused start time defined for the air quality analysis . . .*" leaves the impression that AES is not even aware that this issue was raised and addressed at the hearing.

**B. AES Misstatement Cannot Hide Fact That Combined Cycle Power Block, As Integral Power Generation System, Cannot Meet the CAISO Tariff Response Time Requirement**

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<sup>5</sup> TN 215108, FSA Part 2, December 20, 2016 hearing transcript, p. 74, lines 1-17.

The AES opening brief uses deceptive language in alleging that the combined cycle gas turbine power plant can reach full load in 10 minutes, stating: “*Both the simple-cycle and combined-cycle gas turbine generating units can achieve full power within 10 minutes.*”<sup>6</sup> This is not a true statement for the combined cycle power plant as a whole. The two simple-cycle gas turbines that are elements in the combined cycle gas turbine power plant can achieve full power within 10 minutes, but the combined cycle power plant in its entirety cannot. AES project manager O’Kane confirmed at the hearing that only two-thirds of the 640 MW combined cycle power block, the two simple-cycle gas turbines but not the single steam turbine, could meet the CAISO tariff grid reliability response time. See the Trust’s FSA Part 2 Opening Brief at p. 13.

Mr. O’Kane’s admission means that the CPUC’s identified need for 640 MW of gas-fired grid reliability power at Alamosa, which SCE ratepayers will pay for through a power purchase agreement, will not be met by the combined cycle power block. This was pointed-out by LCWLT witness Powers at the hearing:<sup>7</sup>

*MR. POWERS: I don’t contest what AES -- the statement that AES just made. The simple-cycle component of the combined-cycle unit can, in fact, meet the response time standard. You have a situation where you have a 640-megawatt grid reliability project wherein only maybe 400 or 420 megawatts can actually meet your project objective, grid reliability.*

The choice of combined cycle technology by AES, that cannot meet the grid reliability project objective, has a direct negative air quality impact relative to the

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<sup>6</sup> TN 215203, Applicant Part 2 Opening Brief, pp. 18-19.

<sup>7</sup> TN 215108, FSA Part 2, December 20, 2016 hearing transcript, p. 81, lines 10-16.

use of simple-cycle gas turbines that can achieve the grid reliability response time objective, as described in the Trust's Part 2 Opening Brief at p. 13.

**C. AES Non-Sequitur Regarding CAISO Definition of "Fast Start" Does Not Change Fact That Combined Cycle Power Block Cannot Meet CAISO 20-Minute Response Time for Grid Reliability Resources**

The AES observation that the CAISO tariff defines a fast-start unit for market participation purposes as a unit that has a start-up time of less than two hours is a non-sequitur in the context of the response time required for a grid reliability resource. CAISO Tariff Section 40.3.1.1, and CAISO's interpretation of the meaning of Section 40.3.1.1 is explicit regarding the maximum allowable response time from dispatch instruction to full output of 20 minutes, as noted on p. 14 of the Trust's Part 2 Opening Brief.

**III. COMMISSION EVALUATION OF 1,040 MW PROJECT VIOLATES CLIMATE ACTION LORS BALANCING IMPLICIT IN CPUC LTPP PROCESS THAT RESULTED IN IDENTIFICATION OF NEED FOR 640 MW OF GAS-FIRED GRID RELIABILITY CAPACITY AT ALAMITOS**

The Commission Opening Brief sidesteps this core LORS issue, noting only that AES will participate in the state's greenhouse gas cap-and-trade program and will meet the AB 1368 fuel efficiency requirement.<sup>8</sup> The Commission opening brief is silent on the threshold issue of approving a multi-stage gas-fired project that is far larger, when its two stages are added together, than what the state has determined is necessary at the Alamitos site through the CPUC's LTPP process to assure grid reliability in the LA Basin.

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<sup>8</sup> TN 215200, Commission FSA Part 2 Opening Brief, pp. 3-5.



It is the CPUC's LTPP process that assures that the state's GHG reduction LORS are applied to the electric generation sector to minimize the amount of new gas-fired generation while assuring grid reliability. As noted in the Trust's Part 2 Opening Brief,<sup>9</sup> if the CEC were to disregard the supply plan mandated by the CPUC in its approval of the SCE LTPP, the CEC would be impermissibly substituting its supply planning judgment for the supply plan which state law has directed will be determined by the CPUC. Commission staff made clear they understand this is how the process is supposed to work for determining how much gas-fired generation is needed for grid reliability at Alamitos by their testimony at the Evidentiary Hearing, stating:<sup>10</sup>

"[It] should be noted that the Public Utilities Commission is charged with **reducing** greenhouse gas emissions from the electricity sector to the extent that's possible, while ensuring reliability. And they have approved a contract with this facility."

While the staff is correct that the CPUC is charged with reducing GHG emissions, it is necessary to expand here on staff's testimony regarding the scope the CPUC's responsibilities. If the Commission were to approve the AEC as it is proposed, it would be inconsistent with GHG reduction LORS already applied to this site. For example:

- The "charge" staff mentioned is actually the CPUC's duty to enforce state laws to reduce GHG emissions, including AB 32 (2006) and SB 32 (2016). It is these laws along with Public Utilities Code Sections §454.5(b)(9)(C),<sup>11</sup>

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<sup>9</sup> TN 215201, Trust Part 2 Opening Brief, p. 7.

<sup>10</sup> TN 215108, FSA Part 2, December 20, 2016 hearing transcript, at p. 106, line 24 to p. 107, line 3 (emphasis added)

<sup>11</sup> Section 454.5(b)(9)(C). "The electrical corporation shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible."

§399.11(a),<sup>12</sup> §2836(a)(2),<sup>13</sup> and 2827(c)(4)(B)(ii),<sup>14</sup> that have not been explicitly identified in the FSA.

- The contract the staff mentioned that the CPUC approved in carrying out its duty is for a maximum of 640 MW of gas-fired generation at this site.
- The CPUC “charge” to ensure grid reliability is the same as the primary project objective in the proposed AEC Supplemental Application for Certification (SAFC) that was amended after the CPUC decision was finalized.<sup>15</sup>

In conclusion, if this Commission were to approve the 1,040 MW proposed AEC, it would be inconsistent with GHG reduction LORS considered by the CPUC when it authorized only 640 MW of gas-fired generation at Alamitos. While staff appears to rely on the SCAQMD GHG mitigation credits to comply with AB 32 and SB 32, that does not replace the legislative mandates to reduce GHG emissions in the first place. Those LORS have been applied at this site by the CPUC to limit gas-fired generation to 640 MW. Further, the Trust has demonstrated, and staff testimony at the hearing concurs, that 640 MW of gas-fired generation would meet the basic objectives stated by the Applicant in the SAFC.

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<sup>12</sup> Section 399.11(a). “In order to attain a target of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2013, 33 percent by December 31, 2020, and 50 percent by December 31, 2030, it is the intent of the Legislature that the commission and the Energy Commission implement the California Renewables Portfolio Standard Program described in this article.”

<sup>13</sup> Section 2836(a)(2). “(2) The commission shall adopt the (energy storage) procurement targets, if determined to be appropriate pursuant to paragraph (1), by October 1, 2013.” The CPUC established an energy storage procurement target for SCE of 580 MW under contract by 2020 in D.13-10-040 (October 17, 2013, pp. 15-16).

<sup>14</sup> 2827(c)(4)(B). “The commission shall require every large electrical corporation to make the standard contract or tariff available to eligible customer-generators, continuously and without interruption, until such times as the large electrical corporation reaches its net energy metering program limit or July 1, 2017, whichever is earlier. . . (ii) For Southern California Edison Company, when it has made 2,240 megawatts of nameplate generating capacity available to eligible customer-generators.”

<sup>15</sup> Exh. 1500, TN 206428-1, at p. 1-4. “Develop a project capable of providing energy, generating capacity, and ancillary electrical services (voltage support, spinning reserve, and inertia) to satisfy Los Angeles Basin Local Reliability Area requirements and transmission grid support, particularly in the western subarea of the Los Angeles Basin.”

#### **IV. COMMISSION CLAIM THAT GHG EMISSIONS WILL DECLINE AS A RESULT OF THE PROJECT ARE UNSUPPORTED**

The Commission claims that GHG emissions produced by AEC will be offset by reductions in GHG emissions from those generation resources that are displaced, including the existing and operating Alamitos Generating Station.<sup>16</sup>

This is unsupported by evidence and unlikely to be the outcome in the real world. As the Trust explained in its Part 2 Opening Brief, based on data provided by the Commission in the FSA Part 2,<sup>17</sup> higher efficiency combined cycle units had largely displaced older coastal steam units by 2010.<sup>18</sup>

All that is likely to occur if the proposed 640 MW combined cycle power block is constructed at Alamitos is that air emissions currently produced by combined cycle power plants outside of the LA Basin will be produced in the LA Basin. The result will be poorer air quality in the LA Basin and no reduction in regional GHG emissions from power generation.

#### **V. THERE WILL BE CUMULATIVELY CONSIDERABLE AND UNMITIGATED IMPACTS FROM CONTAMINANTS EMITTED FROM THE PROPOSED AEC**

The Trust has repeatedly objected to the bifurcation of the FSA into two parts because of the risk that the analyses would be inconsistent.<sup>19</sup> During the public review process the Trust observed that the Part 1 analysis contained flaws in the Biological Resources and Soil & Water Resources analyses of adverse impacts

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<sup>16</sup> TN 215200, Commission staff Part 2 Opening Brief, p. 3.

<sup>17</sup> Exh. 2014, p. 4.1-192.

<sup>18</sup> TN 215201, Trust Part 2 Opening Brief, pp. 15-16.

<sup>19</sup> Exh. 3048, TN 214345, Trust Motion to Stay Proceedings, at section 3.

related to emissions from the proposed AEC, as explained below. As further explained below, the Trust observed that, in the analyses of adverse impacts on wetlands' biological resources, the FSA Part 1 found that adverse impacts of dust on wetlands' biological resources may be significant, but that there would be no cumulatively considerable impacts from additional particulate matter deposited during operation of the proposed AEC. It is now clear in the record that the proposed AEC will emit significant amounts of particulate matter, a cumulatively considerable impact of dust on nearby wetlands resources. Further, the Part 1 FSA also found that NO<sub>x</sub> deposition on "local" biological resources could not be adequately mitigated by "regional offsets."<sup>20</sup> However, the FSA did not apply that same reasoning - that "regional offsets" do not adequately mitigate "local" impacts - to dust deposition.

Now that both the Part 1 and Part 2 processes are complete, it is clear that the proposed AEC will emit approximately 1 ton of additional particulate matter monthly above the current baseline<sup>21</sup> - a cumulatively considerable impact from dust settling on wetlands Biological Resources as well as Soil & Water Resources - but the FSA wrongly relies on "regional offsets" to mitigate these "local" impacts.

Neither the Applicant nor the Commission staff has rebutted the Trust's observations and conclusions regarding the flawed cumulative impacts analyses, much less modified the FSA to ensure against significant impacts to nearby wetlands Biological Resources and Soil & Water Resources. Finally, this flawed analysis has resulted in wrongly precluding an analysis of alternatives that would minimize the

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<sup>20</sup> Exh 2000, TN 213768: FSA Part 1, at p. 4.2-34

<sup>21</sup> TN 215201, Trust Part 2 Opening Brief, Table 1, p. 16.

significant impacts, while meeting the basic objectives of the project, and ensuring consistency with all state LORS.

The Applicant's Part 2 Opening Brief confirms:<sup>22</sup>

For the 24-hour and annual state PM10 standards, the background concentrations already exceed the California AAQS without the proposed project. As a result, the predicted project impacts plus background also exceed the 24-hour and annual California AAQS and operation of the proposed project would further contribute to an existing violation of the standards, absent proposed mitigation.

Nonetheless, despite all the evidence in the record from Part 1 and Part 2, the Applicants' Part 2 Opening Brief continues to wrongly rely on "regional offsets" to mitigate "local" impacts:<sup>23</sup>

Air quality mitigation for PM10, and its precursors species, will be provided in the form of ERCs, RTCs, SCAQMD emission offsets, generating unit shutdowns and funding for air quality improvement projects.

#### **A. Insufficient Evidence to Support Conclusions**

There is no modeling data provided by SCAQMD or the Commission to assess whether PM10 emission increases caused by the project will trigger the SCAQMD Rule 1303 PM10 ambient air quality significance threshold of 1 ug/m<sup>3</sup>. Nonetheless, the statement in the AES Opening Brief that "*operation of the proposed project would further contribute to an existing violation of the standards, absent mitigation*" indicates that the PM10 ambient air quality significance threshold would be exceeded.<sup>24</sup>

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<sup>22</sup> TN 215203, Applicant Part 2 Opening Brief, p. 9

<sup>23</sup> Ibid

<sup>24</sup> Ibid.

## **B. Background Versus Mitigation**

Any mitigation in the list of “ERCs, RTCs, SCAQMD emission offsets” that is accounting for reductions in emissions that occurred prior to the FSA “background” calculation cannot be included as “mitigation.” Those credits will have already been recognized in the background baseline, and will not reduce the impacts of the project from the degraded conditions that existed when the PSA analysis began.

## **C. Significant Cumulative Impacts And Inadequate Mitigation**

There is no assertion by the SCAQMD, the Applicant or the Commission that the PM10 emission offset fees to be paid by AES to SCAQMD in conformance with Rule 1304.1 will be used to reduce PM10 emissions in the immediate vicinity of the Alamitos site and the adjacent Los Cerritos Wetlands. The PM10 emission impacts caused by the project on the Los Cerritos Wetlands will likely be significant and permanent without an explicit requirement that PM10 mitigation fees paid by AES to the SCAQMD are to be used to eliminate PM10 increases associated with the proposed project in the immediate vicinity of the Alamitos site.

The FSA Part 2, and the testimony of air quality staff at the Part 2 Evidentiary Hearing,<sup>25</sup> is narrowly focused on cumulative emissions’ and regional impacts on air quality -- not the interrelated adverse impacts of air pollution emissions on Water & Soil Resources or Biological Resources in nearby wetlands.<sup>26</sup> Neither the Commission staff nor the Applicant disputed the facts and conclusions in the Trust’s

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<sup>25</sup> TN 215108, FSA Part 2, December 20, 2016 hearing transcript, at p. 96, line 20 to p. 98, line 11

<sup>26</sup> Exh. 3076, TN 214882, Trust Part Two Opening Testimony, at pp 10-21; See also TN 215201, Trust Part 2 Opening Brief, at pp 18-19

Opening Testimony<sup>27</sup> prior to or at the Part 2 Evidentiary Hearing. And, despite having the author of the Biological Resources available at the Part 2 Evidentiary Hearing<sup>28</sup>, neither the Commission staff nor the Applicant disputed what the Trust articulated in Part 2 Opening Testimony prior to the hearing -- that is, emissions of dust from the proposed AEC will be cumulatively considerable.<sup>29</sup>

First, the Trust has repeatedly stated<sup>30</sup>, air quality degradation, in particular emissions of Particulate Matter, is a form of “dust” that will adversely impact Water & Soil Resources and Biological Resources nearby the proposed AEC. During the Part 1 Evidentiary Hearing, staff stated:<sup>31</sup>

*As far as we look at dust, at its potential adverse effects to biological resources, wildlife, wildlife habitat, really, the main issue is what we are aware of. Where a lot of dust, like from a -- such as from a dirt road, a construction site, on vegetation immediately adjacent to the site, or even on rare plants, dust can cover up the plants and prevent them from photosynthesizing.*

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<sup>27</sup> Ibid

<sup>28</sup> TN 215108, FSA Part 2, December 20, 2016 hearing transcript, at p. 14, line 24 to p. 15, line 5

<sup>29</sup> Exh. 3076, TN 214882, Trust Part Two Opening Testimony, at pp 10-21; See also TN 215201, Trust Part 2 Opening Brief, at pp 18-19

<sup>30</sup> Ex # 3076, TN 214882, Part Two Opening Testimony, at p. 16:

Dust is dust. “PM10 and PM2.5 are dust that comes from power plants and other sources.” According to ARB:<sup>30</sup>

PM10 is a major component of air pollution that threatens both our health and our environment.

**Where does PM10 come from?**

In the western United States, there are sources of PM10 in both urban and rural areas, major sources include:

1. Motor vehicles.
2. Wood burning stoves and fireplaces.
3. Dust from construction, landfills, and agriculture.
4. Wildfires and brush/waste burning.
5. Industrial sources.
6. Windblown dust from open lands.

PM10 is a mixture of materials that can include smoke, soot, dust, salt, acids, and metals. Particulate matter also forms when gases emitted from motor vehicles and industry undergo chemical reactions in the atmosphere.<sup>30</sup>

<sup>31</sup> Exh. # 3061, TN 214529, Part 1 hearing transcript, at p 94, lines 2-8

The fact that staff testimony found cumulative impacts from demolition of AGS in combination with other reasonably foreseeable future projects' must be assumed to be significant:<sup>32</sup>

*But as far as any cumulative effect of demolition of the existing AGS, along with operation of the AEC, and insofar as how that cumulatively might affect wildlife in the Wetlands, I have the same answer that I did a minute ago. The combined effects of the two may or may not be significant. But if they are significant, the contribution of the operating AEC to such an impact would not be considerable.*

Therefore, staff has testified that the cumulative impacts, including demolition of AGS, may be significant. However, staff then argued that the operation of the proposed AEC would not create "cumulatively considerable" additions to what are assumed to be significant impacts.<sup>33</sup> However, on further questioning, staff admitted:<sup>34</sup>

*MS. SOMMER: So, just to clarify, so when you were talking about dust, would that or would that not include particulate matter?*  
*MR. WHITE: I can't testify to that.*

Further, when asked if the FSA Part 1 "Biological Resources" analysis included information in the SCAQMD's PDOC, staff responded:<sup>35</sup>

*Yes, Scott White. I'm the author of the Biology section. [And], no, I didn't take that into account.*

The answer of whether the cumulatively considerable impacts from particulate matter emissions during operation of the proposed AEC was implicitly left to the

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<sup>32</sup> Ibid at p. 92, lines 5-12

<sup>33</sup> Ibid

<sup>34</sup> Ibid at p. 92, lines 13-16

<sup>35</sup> Ibid at p. 86, lines 1-3



Part 2 analysis. According to the author of the Biological Resources section of the FSA Part 1:<sup>36</sup>

*During operation, I can't testify as to whether there would be any particulate matter emitted from the plants. I think that would be for the Air Quality staff, in Part Two of these hearings.*

The Trust agrees with the staff assumption that cumulative impacts of dust deposition from numerous nearby sources will be significant. But contrary to the staff's assertion during the Part 1 hearing that the proposed AEC will not create any additional dust, it is now clear that operation of the proposed AEC will create "cumulatively considerable impacts."<sup>37</sup> For example, the monthly emissions of tons of particulate matter into an area already defined as in non-attainment will be a cumulatively considerable impact on Water Resources & Soil, as well as Biological Resources.<sup>38</sup>Second, the Applicant's Opening Brief concluded:<sup>39</sup>

Air quality mitigation for PM10, and its precursors species, will be provided in the form of ERCs, RTCs, SCAQMD emission offsets, generating unit shutdowns and funding for air quality improvement projects.

But the FSA Part 1 established that emissions from the proposed AEC, and the cumulative impacts on "local" wetlands resources, would not be adequately mitigated by "regional offsets." As noted in the Trust's submittals:<sup>40</sup>

The FSA Part 2 assumes that "offsets" from the SCAQMD mitigation bank would have the benefit of reducing dust accumulating on the nearby wetlands vegetation and affecting the benefits of healthy vegetation to wetlands ecosystem functions.

However, FSA Part 1 made the distinction:<sup>41</sup>

Regional Clean Air Incentives Market ("RECLAIM") Trading Credits would offset the AEC's annual NOx increase in a 1-to-1 ratio so that the proposed project would not result in a net increase in NOx basin-wide (see the **Air Quality** section for more information on the

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<sup>36</sup> Ibid at p. 92, lines 1-4

<sup>37</sup> Exh. 3076, TN 214882, Part Two Opening Testimony, at pp 10-21; See also TN 215201, Trust Part 2 Opening Brief, at pp 18-19

<sup>38</sup> Ibid

<sup>39</sup> TN 215203, Applicant Part 2 Opening Brief, p. 9

<sup>40</sup> Ibid at p. 14

<sup>41</sup> Exh 2000, TN 213768: FSA Part 1 at p. 4.2-34

RECLAIM program) (AEC 2014b). This offset would mitigate the project's effects to basin-wide nitrogen deposition. The biological effects of nitrogen deposition analyzed here are distinct from regional basin-wide NOx effects because the potential effect to biological resources is localized, limited to the area where atmospheric nitrogen pollutants specifically attributed to the project's exhaust plume may be deposited on the soil.

The FSA must include a description of the heightened standard applied, given the degraded nature of the area and the PM10 and PM2.5 non-attainment status of the area. It need not prohibit "one additional molecule" but any more than that needs a more robust description than provided in the FSA Part 2. Emitting tons of dust every month in the form of fine particulate matter is more than the "one additional molecule" the court found unnecessary to consider. Further, the analysis must include a "localized" consideration for dust, and findings that mitigation of "regional" mitigation banks do not adequately mitigate impacts to local wetlands habitat and wildlife, including PM10 and PM2.5 deposition and cumulative fugitive dust from construction of AEC and/or demolition of AGS.

Inexplicably, this rational principle that "regional offsets" are inadequate to mitigate "local" impacts was not applied to the deposition of dust on the wetlands. And despite the Trust clearly articulating the inadequacy, neither the Applicant nor the Commission staff has rebutted and/or resolved the inadequate analysis of PM10 dust settling in the nearby wetlands and creating cumulatively considerable impacts. Further, despite the unsupported claim in the Applicant's Part 2 Opening Brief that "regional offsets" will mitigate significant impacts, neither the Applicant nor Commission staff has rebutted the Trust's evidence and conclusions that "regional offsets" do not adequately mitigate "local" impacts.

In conclusion, the Applicant's Opening Brief documents the significant cumulative impacts from PM10/PM2.5 emissions from operation of the proposed AEC. And Applicant's Opening Brief does not dispute the Trust's observation that regional offset credits do not mitigate local significant adverse impacts – as stated in Trust's Opening Testimony prior to the Part 2 hearing. Commission staff also does not dispute Trust's argument stated in Opening Testimony. The sound principle of distinguishing between "local" impacts and "regional" mitigation employed by staff in the Part 1 analysis of NOx deposition must be applied across subject areas in the FSA, and universally for all sources of environmental degradation. Consequently, the FSA and Applicant's reliance on "regional offset" measures to minimize significant "local" impacts from dust is misplaced and inadequate.

Despite the Applicant's obfuscation in their Part 2 Opening Brief, the law is clear. In circumstances where past and present projects have significantly degraded the environment, the analysis of the proposed project's cumulatively considerable contribution requires distinct standards and heightened detail.<sup>42</sup> In the words of the court, it doesn't mean that a "single molecule" will create a cumulatively considerable impact, but the standard of "significant" must take into account the already degraded conditions.<sup>43</sup> The FSA clearly failed to use the standards required for these circumstances.

The Trust has submitted several alternatives that could minimize the cumulatively considerable adverse impacts of dust. One example is substitution of 400 MW of simple cycle turbines and 200 MW of

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<sup>42</sup> Ibid.

<sup>43</sup> *Communities for a Better Environment v. California Resources Agency* [(2002) 103 Cal. App. 4th 98, 126 Cal. Rptr. 2d 441 ("*Communities for a Better Environment*")]

battery storage for the 640 MW combined cycle power block:<sup>44</sup>  
[Localized] fugitive and stack PM10 deposition cannot be mitigated by purchasing generic PM10 offsets located anywhere in the SCAQMD. This localized deposition is an unmitigatable impact on the Los Cerritos Wetlands. This unmitigatable air impact would be largely eliminated by substituting 400 MW of simple cycle turbines and 200 MW of battery storage for the 640 MW combined cycle block. This substitution would also eliminate 90 percent of the GHG emissions associated with the operation of the combined cycle block while achieving all project objectives defined in the FSA.

For the reasons explained above, and despite contrary conclusory assertions in the Applicant's Part 2 Opening Brief,<sup>45</sup> neither Commission staff nor the Applicant have rebutted the Trust arguments that: 1) the operation of the proposed AEC will represent a cumulatively considerable contribution to significant adverse impacts on Soil & Water Resources and Biological Resources, and 2) the "local" impacts of the AEC on the Los Cerritos Wetlands cannot be mitigated by "regional offsets."

## **VI. THE TRUST HAS NOT MADE A "COLLATERAL ATTACK" ON THE COMMITTEE DECISION REGARDING DEMOLITION IMPACTS**

The Applicant's Part 2 Brief argues that demolition of the AGS Units 1-6 should not be considered in the cumulative impacts analyses because the demolition project only requires ministerial permits and is not considered a "project" under CEQA terms.<sup>46</sup> Applicant also accuses the Trust of a "collateral attack" on this Committee's decision to not treat demolition as a "part of the project."<sup>47</sup>

The Applicant's persistent effort to have this Committee ignore the cumulative impacts of demolition of the AGS contradicts the Committee's specific directive

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<sup>44</sup> TN 215201, Trust Part 2 Opening Brief, at p. 6

<sup>45</sup> Ibid at p. 9

<sup>46</sup> TN 215203, Applicant Part 2 Opening Brief, at p. 14

<sup>47</sup> Ibid at P. 13

regarding the analysis of demolition impacts. Ironically, this latest instance of accusing the Trust of a “collateral attack” on the Committee’s decision is itself a collateral attack.

The Committee Decision,<sup>48</sup> that the Applicant now says is under a collateral attack by the Trust, found: *“Because the demolition of AGS units 1-6 is reasonably foreseeable, it will be analyzed as a future project in the AEC’s cumulative impacts analysis.”*<sup>49</sup> For the Applicant to argue now that the Trust is making a collateral attack on the Committee’s decision, and simultaneously attacking the decision to consider demolition for cumulative impacts, turns common logic upside-down.

Further, the Applicant has not argued that the FSA and staff testimony on cumulative impacts from demolition and other projects was a collateral attack on the Committee’s decision. The record is replete with evidence of the staff’s reliance on the Committee Decision to consider demolition of AGS Units 1-6 in the cumulative impacts analyses.<sup>50</sup>

In conclusion, the record of evidence, testimony and briefs has already established that the demolition of AGS Units 1-6 and other reasonably foreseeable projects are to be analyzed for adverse cumulative impacts with construction and operation of the proposed AEC.

Further, that the operation of the proposed AEC will create a “cumulatively considerable” impact has been repeatedly identified in the Trust’s submittals, and

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<sup>48</sup> Ex # 2002, TN 214007, Committee Ruling on Staff Motion

<sup>49</sup> Ibid at p.9

<sup>50</sup> See eg., Section IV C of this Rebuttal Brief above

there has been no counter-argument by either staff or the Applicant.<sup>51</sup> The Applicant cannot now argue that the proof of those cumulatively considerable impacts are not relevant because CEQA does not require analyses of projects that only require ministerial permits. It is illogical for the Applicant to suggest the Trust is making a collateral attack on the Committee's Decision on Staff's Motion to somehow dismiss the Trust's arguments, and then make a clear "collateral attack" on that Decision themselves.

Further, the Trust's past arguments that the demolition of AGS Units 1-6 should be analyzed as a "part of the proposed project" were not a collateral attack on the Decision. The Trust disagreed, and continues to disagree, with the Committee's Decision not to treat demolition as part of the proposed AEC project. To be clear, as the Trust stated after the Tentative Decision was published (but prior to the Final Decision), the Trust realized the comments on the Tentative Ruling had not included the proper evidence to show the integral connection between demolition and the AEC project.<sup>52</sup>

The Trust corrected that omission by submitting evidence to prove the connection of the two projects as mandated in controlling case law, and requested a reconsideration of the decision.<sup>53</sup> But the Trust did not get a reply to that request for reconsideration. Even after submitting more evidence demonstrating that the Commission has treated demolition as part of a re-power project in the past<sup>54</sup> - where the linkage between the demolition and re-power project were more tenuous

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<sup>51</sup> Ibid

<sup>52</sup> Ex # 3027, TN 213929-1(Trust's Memo sent to Committee)

<sup>53</sup> Ex # 3028, TN 213929-2 (attachment to Trust's Memo - City Staff Report on MOU)

<sup>54</sup> Ex # 3012, TN 214146 (CEC attorney's letter on SBPP)

than in this case - the Committee has yet to reconsider the decision and/or answer the Trust's request for reconsideration.

Once again the Trust requests the Committee reconsider the decision that demolition is not a part of the project. This is not a collateral attack on the Committee's Decision, it is requesting an answer to a request made immediately after the Tentative Decision was published. The Committee had the opportunity to modify the Tentative Decision when the Trust first made the request, and has more reason to do so now, given the totality of the evidence.

Regardless of whether or not the Committee will reconsider the Decision on Staff Motion, at a minimum, the Committee must disregard the Applicant's recent argument that is itself a collateral attack on the Committee Final Decision, and reaffirm the decision that demolition of the AGS is to be considered a cumulative impact. Further, the Applicant should be instructed to submit a description of the foreseeable demolition project, as well as submit documentation of the reasonably foreseeable impacts from demolition for the record prior to drafting a Presiding Member Preliminary Decision.

**VII. THE HHRA PERFORMED FOR THE AEC IS INADEQUATE TO CONFIRM THAT THERE ARE NO ADVERSE LOCAL PUBLIC HEALTH IMPACTS FROM THE AEC**

As stated by the Trust during the Part 2 Evidentiary Hearing, the compressed schedule for preparing for the hearing precluded thorough analysis and public comment on Public Health risks.<sup>55</sup> Nonetheless, as noted numerous times in the

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<sup>55</sup> TN 215108, Part 2 Evidentiary Hearing transcript, at p.134, lines 1-2

Trusts' writings, demolition of vintage power plants, if not properly planned and executed, can emit hazardous materials including asbestos, PCB, mercury, solvents and more.<sup>56</sup> These materials are known to create human health risks of respiratory disease and cancer.

Since the publication of FSA Part 2, it is now clear that operation of the proposed AEC will significantly increase local emissions of PM10 and PM2.5, also known to create risks of respiratory diseases and cancer.

Consistent with the inadequate analyses of adverse impacts to Water & Soil and Biological Resources, the FSA Part 2 also fails to adequately document the significant risk to Public Health from the cumulatively considerable emissions resulting from operation of the proposed AEC during demolition of AGS Units 1 through 6.

The Committee must reaffirm the Decision<sup>57</sup> that demolition of the AGS is to be considered a cumulative impact. Further, the Applicant should be instructed to submit a description of the foreseeable demolition project, as well as submit documentation of the reasonably foreseeable impacts from demolition on Public Health risks, including cumulatively considerable risks of the proposed AEC.

## **VIII. CONCLUSION**

The proposed AEC project violates LORS and will create unmitigated and cumulatively significant impacts on the adjacent Los Cerritos Wetlands, while an

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<sup>56</sup> Exh 3006, TN214152, Vintage Power Plant Demo Manual

<sup>57</sup> Exh. 2002, TN 214007, Committee Ruling on Staff Motion



adequate substitute that would meet all project objectives, eliminate LORS violations, and minimize air quality and GHG impacts is readily available. In

conclusion:

- The proposed AEC is inconsistent with CAISO LORS, specifically CAISO Tariff Section 40.3.1.1.
- The proposed AEC at 1,040 MW is inconsistent with GHG reduction LORS, including Public Utilities Code Section §454.5(b)(9)(C), §399.11(a), §2836(a)(2), 2827(c)(4)(B)(ii), AB 32 (2006), and SB 32 (2016) to reduce GHG emissions, as incorporated in the CPUC planning process that resulted in a contract for 640 MW of gas-fired generation at the Alamos site.
- The proposed AEC would create unmitigated cumulatively considerable and significant impacts to nearby wetlands Biological Resources and Soil & Water Resources;
- The applicant, in addition to the 640 MW combined cycle power block, is actively pursuing other supply resources at the Alamos site, including 400 MW of simple-cycle gas turbines and 200 MW of (additional) battery storage, that would meet all project objectives and reduce air quality and GHG impacts by approximately 90 percent.

The PMPD must therefore deny the SAFC for 1,040 MW of gas-fired generation.

Further, several procedural complaints by the Applicant should be disregarded

by the Committee:

- Arguments by the Applicant that the Trust has raised “issues for the first time” in several of the writings are irrelevant. The process is open for new evidence and arguments until the conclusion. There is no deadline until the record is closed.
- Arguments by the Applicant that the Trust has not met procedural rules for filings (eg, motions, signatures, etc) has been resolved by the Hearing Officer’s recognition the Trust has not been represented by legal counsel and is not violating the spirit of the procedural rules.
- Arguments by the Applicant that the Trust has made “collateral attacks” on the Committee’s decision on Staff’s Motion are misplaced, as the Trust has repeatedly stated in responses. In its Part 2 Opening Brief it is the Applicant that has made a last minute “collateral attack” on the Committee’s decision.

The CPUC must rely on this Commission to thoroughly review a 640 MW facility under CEQA standards.<sup>58</sup> The CPUC found that, should this Committee find that CEQA review mandates denial of the project as proposed, the contract approved by the CPUC can expire without moving forward.<sup>59</sup> The Applicant took a risk applying for a 1040 MW gas-fired project that is inconsistent with LORS, as was apparent in the CPUC decision. Now it is clear the project, beyond just being inconsistent with LORS, creates significant adverse impacts to the environment that are not adequately mitigated in the conditions of approval. And it is now clear there are available alternatives that would be consistent with LORS, minimize environmental harm, and meet the basic objectives of the project.

Finally, denying approval of the SAFC will not cause grid reliability issues. As the Commission is aware, the CAISO can request a reasonable extension of the once-through cooling compliance deadline. The Applicant can submit a new SAFC to this Commission that meets the objectives of grid reliability while simultaneously minimizing adverse impacts to the environment and ensuring consistency with all state LORS.

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<sup>58</sup> Exh 3044, TN 212764-2, CPUC Decision, at p. 29, Section 10

<sup>59</sup> Ibid